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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,027	12/19/2001	Michael Tod Morman	KCC-16,088	5892

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PAULEY PETERSEN & ERICKSON
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EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/025,027

Applicant(s)

MORMAN ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-15, 17-20, 28, 29, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5 and 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-4, 6, 11-15, 17-20, 28, 29, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-4-06 has been entered.

Response to Amendment

2. The parentheticals of claims 1 and 15 filed 12-4-06 are incorrect or incomplete, i.e. while previously presented, such claims are also currently amended. The next response, if any, should provide such claims with correct parentheticals.

Election/Restrictions

3. Claims 2, 5 and 8-10 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 2-12-2004.

Claim Objections

4. Applicant is advised that should claims 11-12 and 14-15 be found allowable, claims 17-18 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two

Art Unit: 3761

claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

A cuff area which is a waist band or leg opening as claimed in claims 17-18 is a cuff area which is a leg cuff area or waist band area as claimed in claims 11-12 and 14-15.

Claim Rejections - 35 USC § 112

5. Claims 19-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 19-20 which depend from claim 1 now claim the combination of claim 1, i.e. a method of producing a cuff area wherein the web assembly including such area is necked down to about 20%-80%, and claim 19 or 20, i.e. the cuff area being expandable a specific percentage. While the original application disclosed the neck down percentage and expandability percentage separately, where is such disclosed in a single embodiment, i.e. in combination? If Applicant maintains such claims 19 and 20, the portion of the originally filed application which discloses the entire scope of such claims in a single embodiment should be set forth.

Claim Language Interpretation

6. A “web assembly of precursor garments” as set forth in claims 1, and 13-15 will be interpreted as at least one layer which is be used in the making of garments, i.e. divisible into at

Art Unit: 3761

least two garments. This web will be considered to be the backsheet web layer at a minimum in claims 3 and 6, and such layer with the topsheet at a minimum in claim 4. The claim language is also interpreted in light of the definitions at page 9, lines 4-10, page 9, line 20-page 10, line 3, page 10, line 21-page 11, line 8, and page 11, lines 12 et seq. It is also noted that exact dimensions of the first and second widths nor the exact difference between the latter has been set forth, i.e. the tension and necking could be such that the second width could be just larger than the first width. It is further noted that the second width is not required to be exactly the same as the original width. It is noted that claims 19 and 20 do not require the cuff area only being expandable by the claimed specific amount.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3, 4, 6, 11-15, 17-20, 28-29 and 32-33 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Litchholt '919.

Claims: 1, 3-4, 6, 11-15, 17-18, 28-29 and 32-33: See Figures 1-3 and 5, Claim Language Interpretation section supra, col. 4, lines 4-8 and 43-46, col. 15, lines 57-65, especially 61-65, col. 16, lines 10-12 and 17-20, col. 17, lines 4-12, especially 9-11, col. 18, lines 6-10, and 16-28, col. 18, line 66-col. 19, line 2, col. 19, lines 9-21, col. 20, lines 44-51 (note col. 19, lines 59-61 with regard to the terminology "prestretched"), and 26-33, col. 21, lines 27-55, col. 25, lines 19-40, col. 26, lines 13-17 and 28-63, col. 27, lines 30-51, col. 28, lines 22-23, col. 29, lines 3-5, 50-

Art Unit: 3761

56 and col. 32, lines 31-43, and col. 19, lines 30-58, and thereby, by incorporation, Buell '793 at, e.g., the Figures and col. 12, lines 9-15 especially with regard to ""a web assembly of precursor garments", i.e. Litchholt teaches a method of producing elastic cuffs, i.e. selective elastic area at the waist and/or leg, for resultant garments, i.e. diapers, obtained from a web assembly, i.e. a topsheet and/or backsheet, of precursor garments which method includes the steps of applying tension sufficient to prestrain or prestretch, e.g. distort, the web assembly of precursor garments, to prestrain or prestretch , e.g. distort, the web assembly of precursor garments to a first dimension, the web assembly of precursor garments being extendible, i.e. having the capability to extend, when the tension is removed, affixing an elastic material to cuff/selective areas while at the first dimension, i.e. while tensioned, removing the tension from the precursor garments web, i.e. the precursor garments, with the elastic material thereon, dividing the web assembly into resultant garments and the elastic material holding the cuff area at a dimension in the resultant garments. It is the Examiner's first position that the Litchholt reference explicitly teaches necking to a first dimension by the tensioning, the web capability of extensibility to a second greater non-necked dimension and causing the web to assume such second dimension at areas outside the cuff area having the elastic material thereon upon removal of the tensioning, and holding of the selected area of the web by the elastic material at a dimension narrower than the second dimension at the cuff area because, e.g., Litchholt teaches tensioning, e.g., in the machine direction at least a drawable nonwoven (It is noted that such could be at most elastomeric) to a "distorted configuration", i.e. a necked configuration, using the tension rollers and combining rollers, then completely attaching an untensioned elastic to at least cuff forming portions of such nonwoven and the nonwoven material itself not having, at the very least, the

Art Unit: 3761

capability to fully return to its original configuration after tensioning, e.g. can return to just less than its original configuration, at the cited portions above. In any case, i.e. the Examiner's second position, since Litchholt at the very least teaches tensioning, e.g., in the machine direction, at least a drawable nonwoven (It is noted that such could be at most elastomeric) to a "distorted configuration" using the tension rollers and combining rollers, then completely attaching an untensioned elastic to at least cuff forming portions of such nonwoven and the nonwoven material itself not having, at the very least, the capability to full return to its original configuration after tensioning, e.g. can return to just less than its original configuration, at the cited portions above, it would be obvious to one of ordinary skill in the art that the Litchholt method necessarily and inevitably includes the claimed steps, i.e. necking a first dimension, i.e. a distorted configuration, by the tensioning, the web having the capability of extensibility to a second greater non-necked dimension and causing the web to assume such second dimension at areas outside the cuff area having the elastic material thereon, i.e. completely bonded thereon, upon removal of the tensioning, and holding of the selected area of the web by the elastic material at a dimension narrower than the second dimension at the cuff area, especially in light of the teachings of '919 at, e.g. col. 19, lines 30-58, and thereby Buell '793 at, e.g., col. 5, lines 15-27, col. 12, lines 9-15 and 35-43, col. 16, lines 22-37 and col. 2, lines 49-59, i.e. lack of puckering and bunching and lack of z-direction bulking due to tensioning and bonding. In either case, Litchholt contemplates permanent distortion by tensioning of a drawable web, e.g. in a machine direction, i.e. some degree of necking of a value more than 0%. Applicant now claims tension sufficient to provide a percent neckdown but in the range of, e.g., about 20% to about 80% in each of claims 1, and 13-15, about 20% to about 60% in claims 28 and 32 and about 30%

Art Unit: 3761

to about 50% in claims 29 and 33. These ranges are not explicitly disclosed by Litchholt. It is noted that the criticality of such ranges as compared to the widest disclosed range of greater than 0% to about 80% has not been set forth in the instant application, i.e. only set forth as desirable. It is again noted that Litchholt, see rejection supra, contemplates permanent distortion by tensioning of a drawable web, e.g. in a machine direction, i.e. some degree of necking of a value more than 0%. Also see '919 at, e.g., col. 19, lines 30-58, and thereby Buell '793 at, e.g., col. 5, lines 15-27, col. 12, lines 9-15 and 35-43, col. 16, lines 22-37 and col. 2, lines 49-59, i.e. the lack of puckering and bunching and the lack of z-direction bulking due to tensioning and bonding is recognized by '027. Therefore, the general conditions of the claims are taught by the prior art at least. Furthermore, where, as here, the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges, i.e. about 20% to about 80% as claimed in claims 1, and 13-15, about 20% to about 60% as claimed in claims 28 and 32 and about 30% to about 50% as claimed in claims 29 and 33 by routine experimentation, see *In re Aller*, 105 USPQ 233.

With regard to claims 19-20: see Claim Language Interpretation section supra and, e.g., col. 4, lines 43-46 and col. 32, line 40.

Response to Arguments

9. Applicant's remarks with regard to the informalities have been noted but are either deemed moot in that they have not been reraised or are deemed not persuasive for the reasons set forth supra. Applicant's arguments with respect to Litchholt have also been considered but are deemed not persuasive because such are narrower than the teachings of the prior art and/or the

Art Unit: 3761

evidence of record in the application. For example, Applicant's argument on page 8, lines 20-24 is uncollaborated by any evidence. For another example, with respect to Applicant's arguments on page 9, second full paragraph, see not only col. 20, lines 44-51 but col. 19, lines 59-61 of '919, i.e. Applicant's allegation of what is meant by the terminology "prestretched" is not consistent with what is taught by '919 with respect to such terminology.

Conclusion

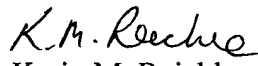
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Morman '028 reference, and thereby '747 by incorporation, teaches a method similar to that claimed with respect to a web assembly useable or comprising an elastic breathable diaper outer cover or other breathable applications. The Coles and Dobrin references teach using elastic breathable composites comprising cuff areas.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
February 28, 2007